

COMMITTEE ON COMMERCE

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2087

(Reference to printed bill)

Strike everything after the enacting clause and insert:

"Section 1. Section 23-561, Arizona Revised Statutes, is amended to read:

23-561. Definitions

In this article, unless the context otherwise requires:

1. "Administrative fee" means the fee that is charged to a client by a professional employer organization for professional employer services. Administrative fee does not include any amount of the fee that is applied to wages, salaries, benefits, workers' compensation, payroll taxes, withholding or other assessments that the professional employer organization pays to or on behalf of covered employees under a professional employer agreement.

2. "Client" means a person who contracts with a professional employer organization under a professional employer agreement. A client does not include a professional employer organization.

3. "Co-employer" means a professional employer organization or a client.

4. "Co-employment relationship" means all of the following:

(a) A relationship between co-employers if the rights, duties and obligations of an employer that arise out of an employment relationship are allocated between co-employers subject to a professional employer agreement and this article, and the relationship is intended to be an ongoing relationship and not a temporary or project specific relationship.

(b) A relationship between a professional employer organization and a covered employee that is subject to a professional employer agreement and this article, that allows the professional employer organization to enforce those rights and that requires the professional employer organization to perform those duties and obligations allocated to the professional employer organization by the professional employer agreement or this article.

1 (c) A relationship between a client and a covered employee that is
2 subject to a professional employer agreement and this article, that allows
3 the client to enforce those rights and requires the client to perform those
4 employer obligations allocated to the client by the professional employer
5 agreement or this article or that are not otherwise allocated by the
6 professional employer agreement or this article.

7 5. "Covered employee":

8 (a) Means an individual who has a co-employment relationship with a
9 professional employer organization and a client, if the individual:

10 (i) Has executed a written notice of the co-employment relationship
11 with a professional employer organization.

12 (ii) Is a party to a co-employment relationship with a professional
13 employer organization and a client.

14 (iii) Is subject to a professional employer agreement under this
15 article.

16 (b) Includes an individual who is an officer, director, shareholder,
17 partner or manager of a client if the professional employer agreement
18 includes the individual as a covered employee and the individual acts as a
19 manager or performs services for the client.

20 6. "INDIVIDUAL POLICY" MEANS AN ARRANGEMENT UNDER WHICH A SINGLE
21 POLICY ISSUED TO THE PROFESSIONAL EMPLOYER ORGANIZATION PROVIDES WORKERS'
22 COMPENSATION COVERAGE FOR A SINGLE CLIENT WITH WHOM THE PROFESSIONAL EMPLOYER
23 ORGANIZATION HAS AN AGREEMENT MEETING THE REQUIREMENTS OF THIS ARTICLE.

24 7. "MASTER POLICY" MEANS AN ARRANGEMENT UNDER WHICH A SINGLE POLICY
25 ISSUED TO THE PROFESSIONAL EMPLOYER ORGANIZATION PROVIDES WORKERS'
26 COMPENSATION COVERAGE FOR MORE THAN ONE CLIENT WITH WHOM THE PROFESSIONAL
27 EMPLOYER ORGANIZATION HAS AGREEMENTS MEETING THE REQUIREMENTS OF THIS
28 ARTICLE.

29 8. "MULTIPLE COORDINATED POLICIES" MEANS AN ARRANGEMENT UNDER WHICH A
30 SEPARATE WORKERS' COMPENSATION POLICY IS ISSUED TO OR ON BEHALF OF EACH
31 CLIENT OR GROUP OF CLIENTS WITH WHOM THE PROFESSIONAL EMPLOYER ORGANIZATION
32 HAS AGREEMENTS MEETING THE REQUIREMENTS OF THIS ARTICLE, BUT PAYMENT

1 OBLIGATIONS AND CERTAIN POLICY COMMUNICATIONS ARE COORDINATED THROUGH THE
2 PROFESSIONAL EMPLOYER ORGANIZATION.

3 ~~6.~~ 9. "Person" means any individual, partnership, corporation,
4 limited liability company or other legally recognized entity.

5 ~~7.~~ 10. "Professional employer agreement" means a written contract
6 between a professional employer organization and a client that provides for:

7 (a) The co-employment of covered employees.

8 (b) The allocation and sharing between the client and the professional
9 employer organization of employer responsibilities with respect to a covered
10 employee, including hiring, firing and disciplinary responsibilities.

11 (c) Any other responsibility required by this article.

12 ~~8.~~ 11. "Professional employer organization":

13 (a) Means any person who is engaged in the business of providing
14 professional employer services whether or not the person uses the term
15 professional employer organization, staff leasing company, registered staff
16 leasing company, employee leasing company or any other name.

17 (b) Does not include:

18 (i) Any person whose principal business activity is not entering into
19 professional employer agreements and who does not hold itself out as a
20 professional employer organization.

21 (ii) A person who shares employees with a commonly owned company as
22 defined by sections 414(b) and 414(c) of the internal revenue code.

23 (iii) Arrangements by a person who assumes responsibility for the
24 product that is produced or service that is performed by the person and who
25 retains and exercises the primary discretion and control over the work
26 performed by the person whose services are supplied under the arrangement.

27 (iv) A person who hires temporary help for the purpose of supporting
28 or supplementing a client's employees.

29 ~~9.~~ 12. "Professional employer services" means the service of entering
30 into a co-employment relationship under this article in which all or a
31 majority of the employees who provide services to a client or to a division
32 or work unit of the client are covered employees.

1 ~~10-~~ 13. "Registrant" means a professional employer organization that
2 is registered under this article.

3 ~~11-~~ 14. "Temporary help services" means services by a person
4 consisting of:

5 (a) Recruiting and hiring the person's own employees.

6 (b) Finding other organizations that need the services of employees
7 who are recruited and hired by the person.

8 (c) Assigning employees to perform work for other organizations to
9 support that organization's workforces, including covering employee absences,
10 skill shortages or seasonal workloads or performing special assignments or
11 projects.

12 (d) Customarily attempting to reassign the employees to other
13 organizations when the employees complete each assignment.

14 Sec. 2. Section 23-562, Arizona Revised Statutes, is amended to read:

15 23-562. Professional employer agreements; rights; notice

16 A. A professional employer agreement shall:

17 1. Govern the co-employment relationship between the client and the
18 professional employer organization and between each co-employer and each
19 covered employee.

20 2. Reserve to the client the right to direct and control covered
21 employees to the extent necessary to conduct the client's business and to
22 discharge any fiduciary responsibility or to comply with any licensing
23 requirement that applies to the client or a covered employee.

24 3. Require the professional employer organization to pay the wages of
25 covered employees, to withhold, collect, report and remit payroll-related and
26 unemployment taxes and to make payment for employee benefits for covered
27 employees. For the purposes of this paragraph, wages do not include
28 obligations between a client and a covered employee that exceed a covered
29 employee's salary, bonuses, commissions, severance pay, deferred
30 compensation, profit sharing or vacation, sick or other paid time off pay
31 unless the professional employer organization expressly agrees to assume

1 liability for the additional obligations in the professional employer
2 agreement.

3 4. Permit both the professional employer organization and client to
4 have a right to hire, terminate and discipline covered employees.

5 5. Specify whether the client or the professional employer
6 organization will purchase and maintain the workers' compensation policy for
7 covered employees from a carrier that is licensed to conduct business in this
8 state. If the professional employer organization purchases the workers'
9 compensation policy, the professional employer organization **SHALL COMPLY WITH**
10 **THE REQUIREMENTS OF SECTION 23-577 AND** shall maintain and, if requested by
11 the client on termination of the agreement, be able to provide to the client
12 records regarding the loss experience related to the workers' compensation
13 insurance that is provided to the covered employees.

14 B. A professional employer agreement shall not:

15 1. Affect, modify or amend any collective bargaining agreement or any
16 rights or obligations of any client, professional employer organization or
17 covered employee that are required under the federal national labor relations
18 act, the federal railway labor act or this title.

19 2. Affect, modify or amend any state, local or federal licensing,
20 registration or certification that is required by any client or covered
21 employee.

22 3. With respect to a bid, contract, purchase order or agreement
23 entered into with this state or a political subdivision of this state, affect
24 the status of a client's company as a small, minority-owned, disadvantaged or
25 woman-owned business enterprise or as a historically underutilized business
26 because the client entered into a professional employment agreement with a
27 professional employer organization.

28 4. Diminish, abolish or remove any rights of covered employees to any
29 clients or obligations of clients to any covered employees that existed
30 before the effective date of a professional employer agreement.

31 5. Terminate an employment relationship that existed before the
32 effective date of a professional employer agreement.

1 6. Establish new or additional enforceable rights of a covered
2 employee against a professional employer organization that are not
3 specifically allocated to the professional employer organization under the
4 professional employer agreement or this article.

5 C. Unless specifically provided in a professional employer agreement
6 or this article:

7 1. The client shall perform all responsibilities that otherwise apply
8 to an employer in an employment relationship.

9 2. The professional employer organization shall perform only the
10 responsibilities that are specifically required under this article or a
11 professional employer agreement. The rights, duties and obligations of a
12 professional employer organization as a co-employer with respect to any
13 covered employee are limited to the responsibilities that are contained in
14 the professional employer agreement and that arise during the term of
15 co-employment by the professional employer organization for the covered
16 employees.

17 D. Every professional employer organization that enters into a
18 professional employer agreement shall provide notice to each covered employee
19 who is affected by the agreement. The notice may be included in the form of
20 the employment documents that a covered employee completes for the
21 professional employer organization.

22 Sec. 3. Title 23, chapter 3, article 4, Arizona Revised Statutes, is
23 amended by adding section 23-577, to read:

24 23-577. Workers' compensation policies; types, requirements

25 A. IF THE PROFESSIONAL EMPLOYER AGREEMENT PROVIDES FOR THE
26 PROFESSIONAL EMPLOYER ORGANIZATION TO PURCHASE THE WORKERS' COMPENSATION
27 POLICY PURSUANT TO SECTION 23-562, THE PROFESSIONAL EMPLOYER ORGANIZATION
28 SHALL FULFILL THE RESPONSIBILITY THROUGH AN INDIVIDUAL POLICY, A MASTER
29 POLICY OR MULTIPLE COORDINATED POLICIES OBTAINED FROM A CARRIER OR CARRIERS
30 LICENSED TO DO BUSINESS IN THIS STATE.

31 B. IF THE PROFESSIONAL EMPLOYER ORGANIZATION FULFILLS ITS
32 RESPONSIBILITY UNDER THIS SECTION THROUGH A MASTER POLICY OR MULTIPLE

1 COORDINATED POLICIES THEN, IN ADDITION TO THE REQUIREMENTS APPLICABLE TO
2 CARRIERS SET FORTH IN SECTIONS 23-961 AND 23-963, THE PROFESSIONAL EMPLOYER
3 ORGANIZATION SHALL:

4 1. NOTIFY THE COMMISSION ON A FORM PRESCRIBED BY OR A CERTIFICATE
5 APPROVED BY THE COMMISSION THAT IT HAS INSURED A CLIENT FOR WORKER'S
6 COMPENSATION PURSUANT TO A MASTER POLICY OR MULTIPLE COORDINATED POLICIES, AS
7 APPLICABLE AS TO EACH CLIENT, PROMPTLY AFTER UNDERTAKING THE CONTRACTUAL
8 OBLIGATION TO DO SO.

9 2. NOTIFY THE COMMISSION ON A FORM PRESCRIBED BY THE COMMISSION OF ANY
10 CANCELLATION OR TERMINATION OF A PROFESSIONAL EMPLOYER AGREEMENT BY THE
11 PROFESSIONAL EMPLOYER ORGANIZATION THAT PROVIDES FOR WORKERS' COMPENSATION
12 COVERAGE THROUGH A MASTER POLICY OR MULTIPLE COORDINATED POLICIES WITHIN TEN
13 DAYS FOLLOWING THE DATE NOTIFICATION OF TERMINATION IS DELIVERED TO THE
14 CLIENT.

15 3. NOTIFY THE COMMISSION ON A FORM PRESCRIBED BY THE COMMISSION OF ANY
16 CANCELLATION OR TERMINATION OF COVERAGE BY A CARRIER OR CHANGE OF CARRIERS BY
17 THE PROFESSIONAL EMPLOYER ORGANIZATION WITHIN TEN DAYS OF THE CANCELLATION,
18 TERMINATION OR CHANGE.

19 4. MAINTAIN AND MAKE AVAILABLE TO THE COMMISSION AND TO CARRIERS
20 LICENSED TO DO BUSINESS IN THIS STATE UPON REQUEST RECORDS FOR EACH CLIENT AS
21 NECESSARY TO ENABLE THE DETERMINATION AND REPORTING OF EACH CLIENT'S LOSS
22 EXPERIENCE IN A MANNER THAT ENABLES THE CALCULATION OF EXPERIENCE
23 MODIFICATION FACTORS FOR EACH CLIENT."

24 Amend title to conform

and, as so amended, it do pass

MICHELE REAGAN
Chairman

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